

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER T. CROUCH,	§
	§
Defendant Below-	§ No. 268, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 1008012959
Plaintiff Below-	§
Appellee.	§

Submitted: May 29, 2012

Decided: June 25, 2012

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 25th day of June 2012, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Christopher Crouch, filed this appeal from the Superior Court's order denying his motion for modification of sentence. The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Crouch's opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Crouch pled guilty in March 2011 to one count of sexual solicitation of a child. As part of his plea agreement, Crouch

agreed to register as a Tier III sex offender. In exchange for his plea agreement, the State dropped three other criminal charges. On June 10, 2011, the Superior Court sentenced Crouch to a total period of five years at Level V incarceration, effective August 25, 2010, to be suspended after serving one year for decreasing levels of supervision. In October 2011, Crouch was found in violation of the terms of his probation and was sentenced to six months at Level V. In April 2012, Crouch filed a motion for modification of sentence requesting, among other things, that his sex offender registry status be reduced from Tier III to Tier II. The Superior Court denied his motion. This appeal followed.

(3) In his opening brief on appeal, Crouch contends that his designation as a Tier III offender is incorrect as a matter of law because 11 Del. C. § 4121(d)(2)(a) provides that sexual solicitation of a child shall be designated a Tier II offense. In its response, the State contends that the Superior Court properly denied Crouch's motion because: (i) Rule 35(b) is not the appropriate procedure for seeking a change in a defendant's Tier level;¹ and (ii) regardless of the statutory provision, Crouch's agreement to register as a Tier III offender is binding upon him.

(4) We agree with the State's position that Crouch has waived any right to complain about his Tier III designation. Crouch entered his plea agreement

¹ See DEL. CODE ANN. tit. 11, §§ 4121(d)(6), 4121(e)(2)(a) (2007) (setting forth the procedures for seeking a change in Tier level designation).

knowingly, intelligently, and voluntarily. Part of the plea agreement was a provision to register as a Tier III sex offender. This agreement is binding upon him and he has waived any right to argue against it.² Accordingly, we find no error in the Superior Court's denial of Crouch's motion for modification of sentence.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

² See, e.g., *Downer v. State*, 543 A.2d 309 (Del. 1988) (holding that Superior Court had jurisdiction to sentence defendant for a crime that later was determined not to exist based on the defendant's voluntary and intelligent agreement to plead guilty to the "nonexistent" offense).